IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.176 OF 2005

Mrs. Susheela Manilal Gala	...	Appellant
Vs.		
Municipal Corporation of Greater Mumbai	...	Respondents

Mr. H.A. Bandukwala for the appellant.

Mr. J. Xavier for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 10TH FEBRUARY, 2005.

P.C.:-

1. Admit. By consent of the parties, taken up for hearing forthwith.

2. This first appeal is filed by the original plaintiff. The plaintiff filed L.C. Suit No.2159 of 2002 in the City Civil Court at Bombay, challenging the notice under section 351 of the Bombay Municipal Corporation Act issued by the defendant-corporation dated 15/2/2002 and the order dated 5/4/2002 passed by the Assistant Municipal Commissioner, (H/West Ward), Mumbai. Admittedly, the defendant-corporation did not file its affidavit. The learned counsel for the appellant pointed out that the suit was posted for arguments on 16/12/2004.

It wrongly appeared on board on 6/12/2004. Consequently, the appellant and his counsel were not present. In fact, on that day, the appellant's counsel was out of India. The learned counsel submitted that without verifying the rozanama and ascertaining that the suit was posted for arguments on 16/12/2004, the learned judge heard the counsel for the defendant-corporation and dismissed the suit on 6/12/2004.

3. It appears from the impugned judgment that the learned judge was of the opinion that none of the documents produced by the appellant were in respect of garage No.3 and the claim of the appellant that the suit garage is authorised was not acceptable.

4. In my opinion, the impugned order needs to be set aside in the interest of justice. The suit was posted for arguments on 16/12/2004. However, the learned judge disposed of the same on 6/12/2004. The appellant and her counsel could not remain present because they were under an impression that the arguments would be heard on 16/12/2004. As such, the appellant's case was not argued at all. Moreover, the defendant-corporation did not file its written statement and, therefore, it has not refuted the case of the plaintiff. In such circumstances, in my opinion, the impugned order is vulnerable and, in the interest of justice, it deserves to be set aside and the matter needs to be remanded to the trial court with a direction to the defendant-corporation that it should

file the written statement within the period laid down by this court and with a direction to the learned trial judge that he shall hear and dispose of the suit, afresh after giving opportunity to the plaintiff as well as the defendant to adduce evidence and advance necessary arguments.

5. Hence, the impugned order dated 6/12/2004 passed by the City Civil Court, Bombay, in L.C. Suit No.2159 of 2002 is set aside. The defendant is directed to file its written statement within a period of six weeks from today. The trial court is directed to take it on file. The trial court is directed to hear and dispose of the suit within a period of six months from the date of receipt of this order by it after giving opportunity to the plaintiff as well as the defendant to adduce evidence and advance necessary arguments. It is clarified that this court has not expressed any opinion on the merits of the case. Till such time as the suit is finally disposed of, the defendant-corporation should not take any coercive steps against the plaintiff in pursuance of the impugned notice dated 15/2/2002 and the order dated 5/4/2002 passed by the Asst. Municipal Commissioner, (H/West Ward), Mumbai. The plaintiff and the defendant shall remain present before the trial court on 3/3/2005.

6. Appeal is disposed of in the aforestated terms.

7. All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

8. In view of the above, the civil application is also disposed of.

(SMT. RANJANA DESAI, J.)